

E-FILED on 08/07/09IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

METTEYYA BRAHMANA,

No. C-09-00106 RMW

Plaintiff,

v.

ORDER DENYING PLAINTIFF'S REQUEST
FOR SERVICE AND DISMISSING
DEFENDANT CONQUEST TECHNOLOGY
LIMITEDPHILLIP CHARLES LEMBO; CYBERDATA
CORPORATION; NUMONIX, INC.; AND
CONQUEST TECHNOLOGY LIMITED,

Defendants.

On June 10, 2009, plaintiff Metteyya Brahmana ("Brahmana") filed an ex parte request for the court to order the U.S. Marshalls to serve defendant Conquest Technology Limited ("Conquest") with a summons and Second Amended Complaint ("SAC"). On June 25, 2009, the court ordered Brahmana to show cause why Conquest should not be dismissed from the action because plaintiff's Second Amended Complaint ("SAC") fails to state a claim against it. Brahmana has responded and defendants Phillip Charles Lembo, Cyberdata Corporation ("CyberData"), and Numonix, Inc., have filed a brief in support of dismissal. For the reasons stated below, the court dismisses Conquest as a defendant and denies Brahmana's request for an order issuing a summons on Conquest.

ORDER DENYING PLAINTIFF'S REQUEST FOR SERVICE AND DISMISSING DEFENDANT CONQUEST TECHNOLOGY
LIMITED—No. C-09-00106 RMW
JAS

1 According to the allegations in the complaint, Conquest is a company "owned and
2 controlled" by defendant Phillip Charles Lembo, and used for an improper business purpose. SAC
3 ¶¶ 8, 20. But the complaint does not anywhere allege that Conquest itself took any action, or that
4 Lembo did anything in his role as owner of Conquest. The complaint's allegations that mention
5 Conquest allege that Conquest was involved in a scheme, with Lembo, to misappropriate intellectual
6 property. As described in the complaint, those actions bear no relation to the actions of CyberData
7 and Lembo that form the basis for plaintiffs claims.

8 Plaintiff contends in his response that Conquest is the agent and/or alter ego of CyberData,
9 but nothing in the complaint supports such a claim. Therefore, the claims against Conquest are
10 dismissed. Plaintiff's request for service on Conquest is denied as moot. Plaintiff may amend his
11 complaint within 20 days to state a claim against Conquest, if he can do so in good faith.

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15 DATED: 08/07/09

RONALD M. WHYTE
United States District Judge

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1 **Notice of this document has been sent to:**

2 **Plaintiff:**

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8 Counsel are responsible for distributing copies of this document to co-counsel that have not
9 registered for e-filing under the court's CM/ECF program.

10
11 **Dated:** 08/07/09

12 JAS
Chambers of Judge Whyte